

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
AIR-TEL, LLC	)	
	)	
Application for Review	)	
	)	
Application to Modify License	)	FCC File No. 0008561769

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 17, 2021**

**Released: May 19, 2021**

By the Commission:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we address two matters regarding the license of Air-Tel, LLC (Air-Tel) for Radiolocation Service Station WQLX454. First, Air-Tel seeks Commission review<sup>1</sup> of a decision by the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) that denied both Air-Tel's request for a declaratory ruling that its GPS-assisted location service constitutes radiolocation as well as its request, in the alternative, for a waiver of our rules to permit the provision of those services under Air-Tel's radiolocation service license.<sup>2</sup> Second, Air-Tel subsequently applied to modify the license to add a radar emission designator.<sup>3</sup> We deny the application for review and dismiss the license modification application.

**II. BACKGROUND**

2. Radiolocation is a subcategory of radiodetermination, which is defined by the Commission's rules as "[t]he determination of position, or the obtaining of information relating to position, by means of the propagation of radio waves."<sup>4</sup> In 2010, the initial license for Station WQLX454 was granted to Sage and Company, LLC (Sage), which authorized secondary operations in an area of Colorado on spectrum in the 3300-3600 MHz band.<sup>5</sup> The application stated that Sage would "be engaged in commercial, and industrial Radiolocation Services."<sup>6</sup> Air-Tel (whose engineer was Sage's principal<sup>7</sup>)

<sup>1</sup> See Air-Tel, LLC, Application for Review (filed Nov. 5, 2018) (AFR). CTIA filed comments. See Comments of CTIA on Air-Tel, LLC Application for Review (filed Nov. 20, 2018). Air-Tel and Fathym, Inc. filed replies. See Air-Tel, LLC, Reply to CTIA Comments (filed Dec. 5, 2018) (Air-Tel Reply); Fathym, Inc., Reply to CTIA Comments (filed Dec. 6, 2019). The AFR, comments, and replies are viewable in the Commission's Universal Licensing System under Call Sign WQLX454.

<sup>2</sup> See *Air-Tel, LLC*, Order on Reconsideration, 33 FCC Rcd 9772 (WTB MD 2018) (*Air-Tel Reconsideration Order*), *aff'g* *Air-Tel, LLC*; *IOU-Acquisitions, Inc.*, Order, 32 FCC Rcd 10157 (WTB MD 2017) (*Order*).

<sup>3</sup> FCC File No. 0008561769 (filed Mar. 12, 2019) (Air-Tel Modification Application).

<sup>4</sup> See 47 CFR §§ 2.1(c), 90.7. Radiolocation Service is authorized under part 90 of the Commission's rules and permits base and mobile radiolocation operation of "stations to determine distance, direction, speed, or position, by means of radiolocation devices, for purposes other than navigation." 47 CFR §§ 90.101, 90.103.

<sup>5</sup> See FCC File No. 0004184297 (filed Mar. 23, 2010).

<sup>6</sup> See *id.*

<sup>7</sup> Air-Tel Reply at 4.

acquired the license in 2016<sup>8</sup> and modified it to add primary operating areas in Arizona, Colorado, Florida, Idaho, and Utah on spectrum in the 3300-3550 MHz band.<sup>9</sup> The station is authorized to transmit digital emissions.<sup>10</sup> Air-Tel used the licensed facilities to provide commercial fleet vehicle location services. Air-Tel's base stations sent interrogation signals to the mobile units, which responded by transmitting their geographic coordinates back to the base station.<sup>11</sup>

3. In 2017, the Commission's Enforcement Bureau questioned whether such operations constitute radiolocation,<sup>12</sup> whereupon Air-Tel discontinued the operations and requested a declaratory ruling that the transmission of location information is permissible as radiolocation.<sup>13</sup> The Division denied the request; it concluded that the transmission of coordinates did not constitute radiolocation as that term is defined in the Commission's rules, and, as a result, that Air-Tel's radiolocation service license did not authorize such operations.<sup>14</sup> In support of its decision, the Division relied on the Commission's 2017 conclusion that radio buoys using GPS technology do not fall within the definition of radiolocation "because their position is not determined by means of the propagation properties of radio waves."<sup>15</sup>

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<sup>8</sup> See FCC File No. 0007307197 (filed June 16, 2016). Air-Tel acquired the license from IOU Acquisitions, Inc., which acquired it from Sage in 2014. See FCC File No. 0006461572 (filed Sept. 16, 2014).

<sup>9</sup> See FCC File No. 0007437896 (filed Oct. 27, 2016). At the time Air-Tel acquired the licenses, the 3300-3550 MHz band was allocated for non-Federal radiolocation use on a secondary basis to Federal radiolocation (with non-Federal amateur use also permitted in the 3300-3500 MHz band on a secondary basis to Federal radiolocation). On September 30, 2020, the Commission removed the secondary, non-federal radiolocation allocation from this band. See *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 11078, 11088, para. 27 (2020) (*3.1-3.55 GHz R&O and FNPRM*).

<sup>10</sup> Specifically, the original site is authorized for emission designator D1D and the other sites are authorized for emission designator X1D. The emission designator is a series of alphanumeric characters that denotes the necessary bandwidth, type of modulation, nature of the signal modulating the main carrier, and type of information to be transmitted. See 47 CFR §§ 2.201(b), 2.202(b). Both D1D and X1D are digitally modulated transmissions without a subcarrier. 47 CFR §§ 2.201, 90.207.

<sup>11</sup> See *Air-Tel Reconsideration Order*, 32 FCC Rcd at 10157, para. 2. All of the authorized locations were put into operation except in Florida, where Air-Tel received an extension of the construction deadline. See FCC File Nos. 0007722459 (filed Apr. 3, 2017), 0007978114 (filed Oct. 30, 2017).

<sup>12</sup> Letter from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Eric St. Germain, President, Air-Tel, LLC (Apr. 18, 2017) (on file in EB-SED-17-00024053); Letter from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Jonathan M. Grossman, Esq., counsel to Air-Tel, LLC (July 19, 2017) (on file in EB-SED-17-00024053); Email from Jason Koslofsky, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to David Kaufman, Esq., Rini O'Neil, PC, counsel to IOU Acquisitions, Inc. and Air-Tel, LLC (Oct. 13, 2017 3:19 PM EST) (on file in EB-SED-17-00024050 and EB-SED-17-00024053).

<sup>13</sup> Petition of Air-Tel, LLC, and IOU Acquisitions, Inc., for Declaratory Ruling and Waiver (Oct. 30, 2017) (Air-Tel Declaratory Ruling Petition). It also requested a waiver to permit it to provide that service in the 3500-3550 MHz band using equipment that had not been approved for operation on those frequencies.

<sup>14</sup> See *Air-Tel Reconsideration Order*, 32 FCC Rcd at 10159, para. 7. Because it denied the request for declaratory ruling, the Division dismissed as moot the request for a waiver to provide that service in the 3500-3550 MHz band using equipment that had not been approved for operation on those frequencies. See *id.* at 10159, paras. 7-8.

<sup>15</sup> See *id.* at 10158-59, para. 4; *Amendment of Parts 2, 15, 80, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2012) (WRC-12), Other Allocation Issues, and Related Rule Updates*, Report and Order, 32 FCC Rcd 2703, 2714, n.72 (2017) (*WRC-12 Report and Order*); *Amendment of Parts 1, 2, 15, 25, 27, 74, 78, 80, 87, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2007) (WRC-07), Other Allocation Issues, and Related Rule Updates, et al.*, Report and Order, Order, and Notice of Proposed Rulemaking, 30 FCC Rcd 4183, 4226, n.345 (2015) (*WRC-07 Report and Order*).

4. In 2018, Air-Tel sought reconsideration of the denial of its request for declaratory ruling or, in the alternative, requested grant of a waiver to permit it to provide location tracking services on radiolocation frequencies.<sup>16</sup>

5. The Commission subsequently issued a *Notice of Apparent Liability for Forfeiture (NAL)* proposing a penalty against Air-Tel for using its Radiolocation Service license “not to provide RLS [Radiolocation Service] service, but rather to provide an unauthorized wireless data transmission service” on radiolocation frequencies.<sup>17</sup> The Commission stated that the Division had correctly concluded that Air-Tel’s location tracking services did not constitute radiolocation;<sup>18</sup> the Commission also concluded that an upward adjustment of the base forfeiture was appropriate because Air-Tel conducted unauthorized operations over an extended period.<sup>19</sup> The enforcement proceeding remains pending.

6. Later in 2018, the Division denied Air-Tel’s petition for reconsideration or waiver.<sup>20</sup> It explained that the Commission’s conclusion in the *NAL* that Air-Tel’s tracking service is not a radiolocation service rendered moot Air-Tel’s arguments to the contrary, as the Bureau lacked delegated authority to contradict the Commission.<sup>21</sup> Similarly, the Division concluded that grant of Air-Tel’s alternative request for a waiver to permit it to provide tracking services under its radiolocation service license was foreclosed by the Commission’s conclusion in the *NAL* that such operations warranted forfeiture.<sup>22</sup> Air-Tel then filed the instant application for review.<sup>23</sup>

7. In 2019, the Bureau announced a temporary freeze on the acceptance and processing of applications for new or expanded part 90 Radiolocation Service operations in the 3100-3550 MHz band in order to “preserve the current landscape of authorized operations” in the band in light of Congress’s mandate that the Secretary of Commerce and the Commission consider alternate uses of the band.<sup>24</sup> The freeze applies to applications for new licenses, applications to modify existing licenses by adding or changing frequencies or locations, applications that seek any other modification that expands the station’s spectral or geographic footprint, and “any other application that could increase the degree to which the 3100-3550 MHz band currently is licensed.” The freeze does not apply, however, to “applications that would not materially increase spectral congestion in the band, including . . . applications that seek to modify existing licenses by changing technical parameters in a manner that does not expand the station’s spectral or

<sup>16</sup> See Petition of Air-Tel, LLC, for Reconsideration (filed Jan. 2, 2018).

<sup>17</sup> See *IOU Acquisitions, Inc.; Air-Tel, LLC*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 8919, 8919, para. 1 (2018) (*NAL*). While the reconsideration petition was pending, Air-Tel was granted a further construction extension for the Florida location, see FCC File No. 0008197293 (filed May 3, 2018); and a waiver for the other locations of 47 CFR § 1.953(c), which provides that a site-based license automatically terminates after 365 consecutive days of non-operation, see FCC File No. 0008370404 (filed Sept. 17, 2018).

<sup>18</sup> See *NAL*, 33 FCC Rcd at 8925, para. 14 (citing *Order*, 32 FCC Rcd at 10159, para. 7).

<sup>19</sup> See *id.* at 8931, para. 27.

<sup>20</sup> See *Air-Tel Reconsideration Order*.

<sup>21</sup> See *id.* at 9774, para. 6.

<sup>22</sup> See *id.* at 9775, para. 9 (“The Commission would not have proposed a forfeiture (indeed, an enhanced forfeiture) if it found, based on the same facts, that requiring Air-Tel to comply with the rules was inequitable, unduly burdensome, or contrary to the public interest, or that Air-Tel had no reasonable alternative.”) (citations omitted).

<sup>23</sup> The Division extended Air-Tel’s construction extension for the Florida location, see FCC File Nos. 0008430215 (filed Nov. 7, 2018), 0008629209 (filed May 6, 2019), 0008877091 (filed Nov. 12, 2019); and waiver of the permanent discontinuance rule for the other locations, see FCC File Nos. 0008514748 (filed Feb. 5, 2019), 0008629211 (filed May 6, 2019), 0008878384 (filed Nov. 13, 2019).

<sup>24</sup> See *Temporary Freeze on Non-Federal Applications in 3100-3550 MHz Band*, Public Notice, 34 FCC Rcd 19, (WTB 2019) (*Freeze Public Notice*) (citing Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division P (RAY BAUM’S Act of 2018), Title VI (MOBILE NOW Act), §§ 603(a), 605(a), 132 Stat. 348).

geographic coverage, such as decreases in bandwidth, power level, or antenna height.”<sup>25</sup> Air-Tel subsequently filed an application to modify its license by adding radar emission designator P0N.<sup>26</sup> In September 2020, the Commission eliminated the non-federal radiolocation service allocation in the 3300-3550 MHz band.<sup>27</sup> In March 2021, the Commission took steps to relocate authorized radiolocation licensees from the 3300-3550 MHz band to allow the 3450-3550 MHz band to be used for wireless services, including 5G.<sup>28</sup>

### III. DISCUSSION

8. We first address Air-Tel’s application for review of the Division’s decision denying reconsideration of the denial of Air-Tel’s request for declaratory ruling and its alternative request for a waiver to permit it to provide GPS tracking services on radiolocation frequencies.<sup>29</sup> As an initial matter, and as a sufficient and independent basis for this disposition, we dismiss the AFR as procedurally defective. Section 1.115(b)(2) of the Commission’s rules makes clear that the filer of an AFR must “specify with particularity, from among [five listed factors], the factor(s) which warrant Commission consideration of the questions presented.”<sup>30</sup> Though the AFR makes arguments on the merits, it does not specify which of the factors in paragraph (b)(2) warrant Commission consideration of the issues resolved by the Bureau. Vague assertions of error are not enough to justify review under our rules, and courts have made clear that “the Commission ‘need not sift pleadings and documents to identify arguments that are not stated with clarity.’”<sup>31</sup> Enforcement of this requirement is critical to the Commission’s ability to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”<sup>32</sup> Air-Tel has thus failed to meet the requirements of section 1.115(b)(2), and dismissal is therefore warranted.

9. As a separate and alternative disposition of Air-Tel’s AFR, we agree with the Division’s analysis in denying the petition for declaratory ruling and the petition for reconsideration of that denial, adopt its reasoning, and deny the application for review. The focus of Air-Tel’s application for review is that because the Division was constrained by Commission precedent, it failed to consider Air-Tel’s arguments for waiver. We disagree. As discussed below, we find that the Division properly applied our precedent to the facts and correctly concluded that Air-Tel’s provision of a location tracking service on radiolocation frequencies is not allowed by our rules. We decline to revise or overturn this precedent. We find that Air-Tel’s application for review does not meet any of the remaining criteria for grant of an

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<sup>25</sup> See *id.*, 34 FCC Rcd at 20.

<sup>26</sup> See FCC File No. 0008561769. P0N is an unmodulated pulse that transmits no information. 47 CFR §§ 2.201, 97.207.

<sup>27</sup> See *3.1-3.55 GHz R&O and FNPRM*, 35 FCC Rcd 11078 at 11088, para. 27.

<sup>28</sup> *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, Order Proposing Modification, 2021 WL 1086295, at \*6-7, paras. 17-19, \*44-45, paras. 150-53 (2021) (allocating the spectrum for flexible wireless use and establishing timing of relocation for authorized radiolocation licensees).

<sup>29</sup> It also requests a waiver to permit it to provide service in the 3500-3550 MHz band using equipment that has not been approved for operation on those frequencies. See AFR at 8-12.

<sup>30</sup> 47 CFR § 1.115(b)(2).

<sup>31</sup> *NTCH, Inc. v. FCC*, 950 F.3d 871, 885 (D.C. Cir. 2020); *NTCH, Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 8446, 8450-51, para. 11 (2018). In *NTCH*, the party seeking Commission review “asserted errors [that] parrot the factors in the Commission’s rules,” 950 F.3d at 885, but did not “specifically identify any statute, regulation, case precedent, or established Commission policy (or any evidence of record)” in support of those assertions, 33 FCC Rcd at 8450, para. 11. In the present case, Air-Tel has not even specified which factor or factors it claims justify review.

<sup>32</sup> 47 U.S.C. § 154(j).

application of review. Therefore, we find that the Division properly denied Air-Tel's request for declaratory ruling, and we agree that the Division properly determined that it did not need to address the waiver request to permit Air-Tel to provide service in a band using equipment that has not been approved for operations on those frequencies. Finally, we deny Air-Tel's request for a modification to change the emission designator for its license to one that is consistent with permissible service in the band<sup>33</sup> because such a modification would be inconsistent with the Commission's effort to consider alternative uses for the 3100-3550 MHz band.

10. Declaratory Ruling. In support of its request for a declaratory ruling, Air-Tel asserted, without any supporting authority, that GPS-assisted location is a form of radiolocation.<sup>34</sup> Air-Tel now argues that, in denying relief, the Division improperly relied on the precedent of the *WRC-12 Report and Order*, in which the Commission held that radio buoys using GPS technology do not fall within the definition of radiolocation and could not be authorized in radiolocation bands; the Commission instead allocated a separate band (the 1900-2000 kHz band) for use by radio buoys that use newer technologies such as GPS.<sup>35</sup> Air-Tel argues that, because the Commission provided "all industry participants another path to obtain the result they sought (*i.e.*, the right to continue engaging in GPS-assisted location using radio buoys), of course no participant . . . quibbled about the definition of radiolocation."<sup>36</sup> We disagree with Air-Tel's assertion that, in that case, the Commission did not have the opportunity to decide whether radiolocation includes GPS-assisted services.<sup>37</sup> The Commission clearly explained that "radio buoys traditionally have been operating under a radiolocation service allocation because their location is determined by the transmission of an omnidirectional signal that is used for radio direction finding[, but r]adio buoys using GPS technology do not fall under this definition because their position is not determined by means of the propagation properties of radio waves."<sup>38</sup> The Commission affirmed this determination in the *NAL*.<sup>39</sup> We find, therefore, that the Division properly applied our clear precedent on what does—and does not—constitute radiolocation.

11. We agree with the Division's observation that radiolocation has been defined the same way in the Commission's rules for decades and that the definition of radiolocation has never been modified to include GPS tracking. As the Division stated in the *Air-Tel Reconsideration Order*, such tracking is permitted on radiolocation spectrum only when our rules make a specific provision for it.<sup>40</sup> As a result, parties interested in using GPS for such purposes must seek to amend the rules accordingly rather

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<sup>33</sup> See Air-Tel Modification Application.

<sup>34</sup> See Air-Tel Declaratory Ruling Petition at 8-9.

<sup>35</sup> See *WRC-12 Report and Order*, 32 FCC Rcd at 2714, para. 30.

<sup>36</sup> See AFR at 4.

<sup>37</sup> *Id.*

<sup>38</sup> See *WRC-12 Report and Order*, 32 FCC Rcd at 2714, n.72 (citation omitted); see also *id.* at 2714, para. 30 (stating that the Commission was adding a maritime mobile service allocation to "address[] the limited situation where radio buoys cannot be authorized under the radiolocation service allocation because of newer technology that uses features like GPS rather than radiodetermination."). Air-Tel also wrongly claims that "industry participants had been operating for years on the assumption that GPS-assisted location service was allowed on their radiolocation spectrum." AFR at 4. Actually, the Commission found that industry participants had mistakenly believed that the radio buoys were authorized under their part 80 ship station licenses. See *WRC-07 Report and Order*, 30 FCC Rcd at 4238, para. 153.

<sup>39</sup> *NAL*, 33 FCC Rcd at 8925-26, para. 14.

<sup>40</sup> See *Air-Tel Reconsideration Order*, 33 FCC Rcd at 9774-75, para. 8 (citing *Amendment of Parts 2 and 11 of the Commission's Rules to Provide for the Use of the Band 10000-10500 Mc by the Non-Government Radiolocation Service*, Report and Order, 39 F.C.C. 733 (1960)).

than request a declaratory ruling that the rules already accommodate such use.<sup>41</sup> Thus, we affirm the Division's denial of a declaratory ruling that radiolocation includes the use of GPS tracking.

12. Waiver. Air-Tel asserts that the Division wrongly denied its request for a waiver to permit it to provide its tracking services on radiolocation frequencies pursuant to section 1.925(b)(3)(ii) of our rules. A waiver may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest, or if, in view of unique or unusual circumstances, application of the rule(s) to the instant case would be inequitable, unduly burdensome, or contrary to the public interest, or there is no reasonable alternative.<sup>42</sup> The Division properly concluded that Air-Tel had not demonstrated that it meets this standard.<sup>43</sup>

13. Air-Tel asserts that a waiver is warranted here because it reasonably believed that it would be able to continue to operate Station WQLX454 as the station was operated before Air-Tel acquired it. Air-Tel argues that its claim was supported by the fact that no other licensee uses this band to offer such tracking, so only Air-Tel is in a position to request such a waiver.<sup>44</sup> Air-Tel also asserts that it has no alternative, as the "alternative" is a complete shutdown of its operations, leaving all of its existing and potential customers without service.<sup>45</sup>

14. We are not persuaded by Air-Tel's claim that it reasonably believed that it would be able to continue to operate Station WQLX454 in violation of our rules. As a threshold matter, Air-Tel has not provided sufficient justification for the proposition that a waiver of Commission rules is warranted because of a licensee's erroneous belief—whether or not reasonable—that the rules permit its conduct. Such a proposition would have the effect of "eviscerat[ing] a rule by waivers," a result at complete odds with the limited safety valve purpose of the waiver process, which imposes a "high hurdle at the starting gate" on waiver applicants.<sup>46</sup> In any event, Air-Tel may not rely upon its predecessors' unauthorized operations to justify continued operations, and it certainly cannot rely on such unauthorized operations as justification for expansion of such unauthorized operation to multiple sites across the country. Further, we reject Air-Tel's argument that it should be granted a waiver because, as the only licensee in the country using this band to offer location tracking in this way, only Air-Tel is in a position to request such a waiver.<sup>47</sup> Quite the contrary: the fact that no other land mobile radiolocation licensee, among over 1,700 active licensees in this band, uses it to offer such tracking further supports that such use is not authorized by our rules. Moreover, the fact that Air-Tel knew that no other licensee is using the band to offer tracking in this way calls into question any claim that it reasonably believed such use was somehow authorized or allowed. Further, as the Division stated in 2018, here there has been no showing that requiring Air-Tel to comply with the rules was inequitable, unduly burdensome, or contrary to the public interest, or that Air-Tel had no reasonable alternative.<sup>48</sup> Given the contrary operations of other licensees in the band, quite the contrary appears to be the case. Air-Tel has not presented additional information to demonstrate that a waiver is warranted.

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<sup>41</sup> See *id.*

<sup>42</sup> 47 CFR § 1.925(b)(3).

<sup>43</sup> *Air-Tel Reconsideration Order*, 33 FCC Rcd at 9775, para. 9.

<sup>44</sup> See AFR at 6.

<sup>45</sup> See *id.* at 10.

<sup>46</sup> See, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, 1159 (D.C. Cir. 1969).

<sup>47</sup> See *id.* at 6.

<sup>48</sup> See *Air-Tel Reconsideration Order*, 33 FCC Rcd at 9775, para. 9.

15. We find that Air-Tel's reliance on *Cobb Electric Membership Corporation (Cobb)*<sup>49</sup> is misplaced.<sup>50</sup> Air-Tel argues that *Cobb* stands for the proposition that, "where a licensee reasonably relies on the Commission's past acceptance of certain operational practices and the Commission later finds those practices to be at variance with the Rules, a waiver is appropriate to allow the licensees to remain in operation . . . until it can find a remedy that enables it to modify its system to comport with the Rules."<sup>51</sup> We do not read the Bureau's decision in *Cobb* as an endorsement of such a proposition, but to the extent that case can be construed in this manner, we unequivocally disavow the notion that a waiver is appropriate to enable a licensee to continue operating in conflict with the rules until it can find a way to bring its system into compliance, merely because the agency had failed to take action against such operations for a time before ruling that those operations violated the rules. In any event, *Cobb* differs from the present matter in critical respects. In that case, the licensee constructed its licensed part 22 facilities using equipment that it later learned had been erroneously certified for part 22 use, where it should have been approved only for part 90 use,<sup>52</sup> and the Division granted an extension of the construction deadline to allow the licensee to replace it with part 22-compliant equipment.<sup>53</sup> Finally, *Cobb* involved a grant of temporary relief only; Air-Tel seeks to rely on this precedent to seek open-ended authorization to operate in violation of the applicable service rules. We reject Air-Tel's assertion that this precedent entitles it to waiver relief.<sup>54</sup>

16. **Modification Application.** In March 2019, Air-Tel filed an application to modify its license to add an emission designator that is consistent with service permissible in the band.<sup>55</sup> Given the statutory mandate set out in the RAY BAUM'S Act of 2018 to consider alternative uses for the 3100-3550 MHz band, the Bureau had recently issued a temporary freeze on the acceptance and processing of applications for new or expanded Part 90 Radiolocation Service operations in the 3100-3550 MHz band so that the current landscape of authorized operations in the band should remain undisturbed.<sup>56</sup> We conclude that Air-Tel's proposed modification conflicts with the freeze because allowing Air-Tel to add an emission type to provide a new and different kind of service from what it is authorized to provide would increase the degree to which the band is licensed and potentially increase spectral congestion. Consequently, we dismiss without prejudice Air-Tel's modification application.<sup>57</sup>

#### IV. CONCLUSION

17. Air-Tel's application for review is procedurally defective and therefore warrants dismissal. Additionally, Air-Tel has not demonstrated that the Division's decision denying Air-Tel's request for declaratory ruling or waiver was in error, or that reversal of our precedent is warranted. Therefore, we affirm the *Order on Reconsideration* and dismiss and, on alternative and independent

<sup>49</sup> *Cobb Electric Membership Corporation*, Letter Order, 32 FCC Rcd 10077 (WTB MD 2017) (*Cobb*).

<sup>50</sup> Similarly, we find Air-Tel's reliance on *Shipcom* and *Drock Gaming* misplaced. See *Shipcom, LLC*, Order, 25 FCC Rcd 4894 (WTB, 2010); *Drock Gaming, LLC*, Order, 31 FCC Rcd 11672 (WTB, 2016). In both *Shipcom* and *Drock Gaming*, the Division granted limited waivers, whereas Air-Tel asks for a wholesale waiver to provide a service not contemplated in the respective section of our rules.

<sup>51</sup> AFR at 7.

<sup>52</sup> *Cobb*, 32 FCC Rcd at 10078-79.

<sup>53</sup> *Id.* at 10081-82.

<sup>54</sup> See AFR at 11.

<sup>55</sup> See Air-Tel Modification Application.

<sup>56</sup> See *Freeze Public Notice*, 34 FCC Rcd at 20.

<sup>57</sup> See *id.* at 20, n.5 ("Applications subject to the freeze that are filed on or after the date of this Public Notice will be dismissed without prejudice and filing fees will not be automatically refunded.").

grounds, deny the application for review.<sup>58</sup> We also dismiss Air-Tel's application to modify its license to add a radar emission.

**V. ORDERING CLAUSES**

18. Accordingly, IT IS ORDERED pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 155(c), and section 1.115 of the Commission's rules, 47 CFR § 1.115, that the Application for Review filed by Air-Tel, Inc. on November 5, 2018, IS DISMISSED and, in the alternative, DENIED. The alternative request for waiver IS DENIED.

19. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 155(c), and section 1.934 of the Commission's rules, 47 CFR § 1.934, that application FCC File No. 0008561769 filed by Air-Tel, Inc. on March 12, 2019, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>58</sup> Because we conclude that the Division correctly denied Air-Tel's requests for a declaratory ruling or waiver to permit it to provide its tracking services on radiolocation spectrum, we need not address, and dismiss as moot, Air-Tel's request for a waiver to permit it to provide that service in the 3500-3550 MHz band using equipment that has not been approved for operation on those frequencies.